

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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TELEPET USA, INC.,

Plaintiff(s),

v.

QUALCOMM INCORPORATED,

Defendant(s).

Case No. 2:15-CV-846 JCM (GWF)

ORDER

Presently before the court is plaintiff Telepet USA, Inc.'s (hereinafter "plaintiff") motion for leave to file a supplemental response. (Doc. # 40).

On June 23, 2015, defendants filed a motion to compel arbitration and to dismiss. (Doc. # 22). On July 10, 2015, plaintiff filed a response. (Doc. # 30). On July 20, 2015, defendants filed a reply. (Doc. # 37).

In their reply, defendants suggest that certain of plaintiff's arguments are moot because the American Arbitration Association ("AAA") is in the process of reopening the parties' arbitration. (Doc. # 37). Defendants submit evidence in the form of emails and letters to substantiate these claims. (Doc. # 37, exhs. 1-6).

In the instant motion, plaintiff states that it agreed to dismiss this action without prejudice to allow the matter to proceed before the AAA on certain conditions. (Doc. # 40). Plaintiff represents that while defendants have agreed to one of plaintiff's proposed conditions, that defendants shall advance costs on behalf of plaintiff, defendants have failed to address plaintiff's other desired conditions. Plaintiff therefore seeks leave to file a supplemental response setting forth its view of any issues regarding proceedings before the AAA. (Doc. # 40).

1 The local rules provide only for a response and reply to a motion. D. Nev. R. 7-2(b)-(c).  
2 However, sur-replies may be permitted with the court's approval to address new matters raised in  
3 a reply. *Harkey v. U.S. Bank, N.A.*, No. 2:14-cv-00177-RFB-GWF, 2015 WL 300271, at \*1 (D.  
4 Nev. Jan. 21, 2015). Where a reply asserts new evidence, the court should not consider it without  
5 giving the opposing party an opportunity to respond. *Provenz v. Miller*, 102 F.3d 1478, 1483 (9th  
6 Cir. 1996).

7 In light of the foregoing, the court finds good cause to grant the instant motion for leave to  
8 file a supplemental response. For the first time on reply, defendants argued that dismissal is  
9 appropriate because the AAA is reopening the parties' arbitration. Plaintiff is entitled to respond  
10 to the new evidence provided by defendants before the court rules on the motion to compel  
11 arbitration.

12 Accordingly,

13 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that plaintiff's motion for  
14 leave to file a supplemental response, (doc. # 40), be, and the same hereby is, GRANTED.

15 IT IS FURTHER ORDERED that plaintiff shall file any supplemental response within 14  
16 days of the date of this order. Defendants shall file any supplemental reply within 7 days.

17 DATED July 31, 2015.

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UNITED STATES DISTRICT JUDGE